

The Defects of the Articles of Confederation, Part 11

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Synopsis: This is the eleventh essay in a series on the Articles of Confederation. In this edition, the issue of slavery in the several states is considered.

Human civilization is probably about 10000 years old. It is fascinating to consider that chattel slavery has existed for 98.5% of that entire period, having ended only about 150 years ago. While it is nothing new in the history of mankind, it is more revolting to the modern mind. In America we continue to be preoccupied with it since American slavery was uniquely racial in its implementation. That, combined with the fact that there are Americans still living who knew, as children, people who had been slaves, causes slavery to remain fresh in our debates. But those among us who impute universal racism to white people would do well to remember that far more white people than black have been slaves throughout history. The enslavement of blacks began in Africa, just as the enslavement of whites originated in Greece and Rome. Does racism exist in America? Of course; it always has and it always will so long as people of one racial group desire to feel superior to some other. There are and always will be a few who join the Ku Klux Klan or sympathize with them and their equivalents; there are likewise on the other side always a few who embrace Black Liberation theology and its various mutations. I digress -- our subject is the issue of slavery at the forming of the United States.

Slavery was practiced throughout the 13 colonies from the mid-1600's onward, especially in the south. It became apparent soon after the colonies were established that black people were better suited to the hard labor required in an agricultural economy in the sub-tropical conditions of the south. Or at least the white people discovered that claim as a convenient excuse. In any case, many of that era believed that slavery was an efficient economic system. Secondly, slavery was important to the British crown as a source of revenue, and was not only encouraged in the colonies, it was sometimes vigorously promoted since there was a great deal of money to be made buying/capturing slaves and selling them in the colonies once Britain obtained a lock on the slave trade in the early 1700's.

The institution of slavery was not uniformly embraced in all the colonies. In the north, the religious ethic rejected slavery on moral grounds, and it did not take hold there as it did in the southern colonies, where the (false) economic argument was firmly planted. There were many attempts prior to the Revolutionary War to limit slavery in the colonies. A few examples are as follows.

In Virginia, the state Assembly imposed a series of import duties from 1732 on the importation of slaves that nearly amounted to a prohibition (up to 40% of the slaves' value). In 1772 the Virginia Assembly wrote to King George III, asking him, unsuccessfully, to abolish the slave trade [1]:

"We implore your Majesty's paternal assistance in averting a calamity of a most alarming nature. The importation of slaves into the colonies from the coast of Africa hath long been considered as a trade of great inhumanity, and under its present encouragement we have too much reason to fear will endanger the very existence of your Majesty's American dominions. We are sensible that some of your Majesty's subjects may reap emoluments from this sort of traffic, but when we consider that it greatly retards the settlement of the colonies with more useful inhabitants and may in time have the most destructive influence, we presume to hope that the interest of the few will be disregarded when placed in competition with the security and happiness of such numbers of your Majesty's dutiful and loyal subjects. We therefore beseech your Majesty to remove all those restraints on your majesty's governors in this colony which inhibit their assenting to such laws as might check so pernicious a consequence."

The Rhode Island legislature passed a law in 1774 whereby all slaves brought into state by citizens of other states were to be free, except those passing through with their master; also, Rhode Island citizens bringing in slaves had to remove or free them in one year [2]. In Connecticut, the Assembly passed a law in 1774 stating [3] "No Indian, mulatto, or negro slave shall at any time hereafter be brought or imported into this state, by sea or land, from any place or places whatsoever, to be disposed of, left, or sold within the State." New Jersey had attempted in 1744 and 1761 to essentially prohibit importation by imposing large import duty [4], but it was rejected by the Provincial Council as injurious to crown revenue. In Pennsylvania, the influence of the Quakers led to the voluntary freeing of many slaves from 1725 onward [5]. Massachusetts attempted in 1774 to prohibit the importation of slaves outright [6], but this motion was rejected by Gov. Hutchinson as it would reduce revenue to the crown.

The Articles of Confederation was silent on the entire issue of slavery; each state enacted legislation as it saw fit. In 1775, slavery existed in all 13 states but there was a great deal of activity in the states toward reducing slavery from the start of the Revolution through the period of the Articles. In 1776 Delaware prohibited further importation through a provision in its new Constitution, which read: "No person hereafter imported into this state from Africa ought to be held in slavery under any pretense whatever, and no Negro, Indian or mulatto slave ought to be brought into this state for sale from any part of the world." Unfortunately, free blacks were occasionally kidnapped & sold. In 1776, Rhode Island passed legislation that made all children of slaves born in 1776 and after free; and promoted the gradual liberation of existing slaves by regulation [7]. In 1778, Virginia prohibited further importation of slaves, although probably more out of fear of a large population of slaves starting an uprising than out of widespread disapprobation of the institution itself [8]. Pennsylvania passed a law in 1780 that prohibited further importation, and made all persons born after 1 Mar 1780 servants only until age 28, after which they were then free [9]. It was not abolished outright until 1847.

Massachusetts adopted a new Constitution in 1780, the first article of which read: "All men are born free and equal, and have natural, essential, and unalienable rights; among which may be reckoned the right of enjoying, and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness." It was not intended by these words to abolish slavery, but a series of court rulings on the Constitution in 1781 and afterward serve to gradually reduce slavery; the people considered it abolished for practical purposes [10]. In 1788, importation of slaves was prohibited directly [11].

Maryland prohibited further importation in 1783 (but slavery was not abolished until 1864). New Hampshire passed a law in 1783 that was similar to the 1780 Pennsylvania law; in 1784, Connecticut did the same [12]. New York followed suit in 1785, except the children of slaves gained full voting rights. Starting in 1782, New Jersey freed all the slaves that had been owned by Tories [13]. In 1786 the legislature passed provisions for voluntary gradual freeing of slaves of a certain age [14]; in that same year prohibited further importation; and in 1788 also prohibited exportation [15]. Gradual mandatory emancipation did not begin until 1804, and slavery was not abolished entirely until 1846.

In 1786 the state of North Carolina imposed a 5 pound sterling duty on importation to discourage the trade. Only in Georgia and South Carolina was the slave trade entirely unrestricted.

The weakness of the Articles of Confederation in this regard was that there was no limitation on the importation of slaves as a general rule. It was gradually being phased out in the north, while importation continued unabated in the south. As the debates at the Constitutional Convention got underway, it was soon apparent that many in the north would have preferred to abolish slavery entirely, but the Georgia and South Carolina delegations made it clear that they would never join the union if there was any attempt to remove slavery as an institution – it was, they believed, too important for the function of their economy [16]. This condition determined the debate, as Georgia and South Carolina were essential for the preservation of the union. It was necessary to keep those two states in the union, since they would

serve to deter a serious military threat from Spain in the south. Secondly, if they did not join the union, it is likely they would have attempted to rejoin Great Britain in order to gain an ally in any controversy with Spain over navigation rights on the Mississippi. These two southern states were however, willing to accept the prohibition on the importation of slaves after 1808. The provision in the U. S. Constitution reads:

[Article 1] Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The provision did not affect existing slaves, but it was an improvement over the Articles since it universally limited importation after 1808. In effect, it imposed on all the states, even those where slavery was most entrenched, the same trend that had occurred in the northern states throughout the previous decade.

[1] James Curtis Ballagh, *A History of Slavery in Virginia*, Baltimore: Johns Hopkins University Press, 1902, p. 22

[2] William D. Johnston, *Slavery in Rhode Island 1755 – 1776*, Providence: Rhode Island Historical Society, 1894, pp. 130, 131

[3] Bernard C. Steiner, "History of Slavery in Connecticut", Johns Hopkins University Studies in Historical and Political Science, Eleventh Series, Baltimore: The Johns Hopkins Press, September-October 1893, p. 16

[4] Henry Scofield Cooley, "A Study of Slavery in New Jersey", Johns Hopkins University Studies in Historical and Political Science, Fourteenth Series, Baltimore: The Johns Hopkins Press, September-October 1896, p. 15,16

[5] Edward Raymond Turner, *The Negro in Pennsylvania: Slavery – Servitude – Freedom 1639 - 1861*, Washington DC: The American Historical Association, 1911, pp. 56 - 61

[6] George H. Moore, *Notes on the History of Slavery in Massachusetts*, New York: D. Appleton & Co. 1866, p. 142

[7] op. cit., Johnston, p. 133

[8] op. cit., Ballagh, p. 23

[9] op. cit., Turner, pp. 77 – 79

[10] op. cit., Moore, pp. 202 - 217

[11] op. cit., Moore, pp. 141, 142

[12] op. cit., Steiner, p. 30

[13] op. cit., Cooley, p. 46

[14] op. cit., Cooley, p. 47

[15] op. cit., Cooley, p. 18, 19

[16] See the text of the debates in the Constitutional Convention on 8 and 22 Aug 1787. The primary source is Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787; With a Diary of the Debates of the Congress of the Confederation As Reported by James Madison*, Philadelphia: J. B. Lippincott & Co., 1881, Vol. 5, pp . 391-394 and 457-461; see also E. D. Duvall, "Regarding the Three-Fifths Rule", 20 Jun 2011, pp. 51-59